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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,679	04/13/2004	Shigeru Nakahara	NAKAHARA2	2879
1444	7590	07/28/2005	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			BURNHAM, SARAH C	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,679

Applicant(s)

NAKAHARA, SHIGERU

Examiner

Sarah C. Burnham

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 15-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 refers to "said lower seat back portions" in lines 19-20. It is unclear how there are plural seat back portions. Perhaps this phrase should be replaced with - - said lower seat back portion - -.

Claims 16-18 are rejected as being dependent upon a rejected base claim

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19 and 21 are rejected as best understood under 35 U.S.C. 102(b) as being anticipated by Vu Khac et al. (5,544,942). With respect to claims 15 and 19 Vu Khac et al. disclose a seat back (Figure 1) of an automotive seat comprising: a lower seat back portion (1) including a foam padding (12) therein, said lower seat back portion having a forward surface (unlabeled) facing to a side forwardly of said automotive seat

Art Unit: 3636

and a backward side (unlabeled) facing to a side backwardly of the automotive seat; an upper seat back portion (2)(3)(2)(9) connected with an upper area (unlabeled) of said lower seat back portion (1), said upper seat back portion (2)(3)(2)(9) including a foam padding (unlabeled) in the form of a "single block of polyurethane foam" (column 3, line 65) and has a forward surface (unlabeled) facing to a side forwardly of said automotive seat and a backward side facing to a side backwardly of the automotive seat; said foam padding of said upper seat back portion (2)(3)(2)(9) having a hardness equal to or greater than that of the other foam parts; and a vent means in the form of the "permeability" characteristic of the lower seat back portion (12). The lower seat back portion (12) can have a concave type shape wherein the venting means, in the form of the permeable characteristic of the material, is formed throughout the foam block including the recess in the concave portion (see Figures 4 and 5). A connecting means in the form of a frame (10) which receives the lower portion (12) fixedly connects the lower seat back portion and the upper seat back portion.

Allowable Subject Matter

5. Claim 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

6. Claims 16-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 22 is allowed.

Response to Amendment/Arguments

9. The amendment filed on May 24, 2005 has been considered in its entirety. Remaining issues are detailed in the section above. Applicant argue that Vu Khac does not disclose a vent means including a recessed portion defined in the forward surface of the lower seat back portion. Figures 4 and 5 best disclose the concave shape of the forward surface of the lower seat back portion (12) formed by protrusions (13). The air permeability of elements (12) and (13) in combination with the venting holes (14)(15)(16) cooperate to form a venting means. Therefore the Examiner maintains that the vent means includes the recessed portion of the forward surface of the lower seat back member (12), which is formed of permeable material.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/822,679
Art Unit: 3636

Page 6

SCB
July 22, 2005



PETER R. BROWN
PRIMARY EXAMINER